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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jeremy Pinson,

10 Petitioner,

11 v.

12 C. Howard,

13 Respondent.
14

No. CV-18-00433-TUC-RM

ORDER

15 On August 24, 2018, Petitioner Jeremy Pinson filed a Petition for Writ of Habeas
16 Corpus pursuant to 28 U.S.C. § 2241 (“Petition”). (Doc. 1.) Respondent filed an Answer
17 on February 7, 2019 (Doc. 15), and Petitioner filed a Reply on February 22, 2019 (Doc.
18 16). On March 12, 2021, Magistrate Judge Bruce G. Macdonald issued a Report and
19 Recommendation (“R&R”) (Doc. 17), recommending that this Court dismiss the Petition
20 for lack of jurisdiction. Petitioner filed a timely Objection (Doc. 21), Respondent filed a
21 Response to the Objection (Doc. 22), and Petitioner filed a Reply (Doc. 23). Respondent
22 then filed a Motion to Strike Petitioner’s Reply (Doc. 24). Petitioner did not respond to
23 Respondent’s Motion to Strike. For the following reasons, Respondent’s Motion to Strike
24 will be granted, Petitioner’s Objection will be overruled, the R&R will be adopted, and the
25 § 2241 Petition will be denied.

26 **I. Standard of Review**

27 A district judge “may accept, reject, or modify, in whole or in part,” a magistrate
28 judge’s proposed findings and recommendations. 28 U.S.C. § 636(b)(1). The district judge

1 must “make a de novo determination of those portions” of a magistrate judge’s “report or
2 specified proposed findings or recommendations to which objection is made.” 28 U.S.C. §
3 636(b)(1). The advisory committee’s notes to Rule 72(b) of the Federal Rules of Civil
4 Procedure state that, “[w]hen no timely objection is filed, the court need only satisfy itself
5 that there is no clear error on the face of the record in order to accept the recommendation”
6 of a magistrate judge. Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 addition.
7 *See also Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999) (“If no objection
8 or only partial objection is made, the district court judge reviews those unobjected portions
9 for clear error.”); *Prior v. Ryan*, CV 10-225-TUC-RCC, 2012 WL 1344286, at *1 (D. Ariz.
10 Apr. 18, 2012) (reviewing for clear error unobjected-to portions of Report and
11 Recommendation).

12 **II. Background**

13 Petitioner is serving a 252-month aggregate sentence for Threats Against the
14 President, False Statement, Threat to a Juror, and Mailing Threatening Communications in
15 violation of 18 U.S.C. §§ 871(a), 876, 876(c), and 1001(a)(2). (*See* Doc. 15-2 at 7–9.)
16 Petitioner challenges in her Petition a disciplinary conviction that she asserts resulted in
17 the loss of privileges and good time credits. (Doc. 1 at 4.) Petitioner alleges that Officer
18 Whelton falsely charged her with being in an unauthorized area and lying to staff. (*Id.*)
19 Petitioner seeks a writ of habeas corpus expunging Officer Whelton’s report. (*Id.* at 9.)

20 The R&R finds that, although the Petition alleges a loss of good time credits, the
21 only sanction actually imposed was a thirty-day loss of commissary privileges. (Doc. 17 at
22 5.) Because the loss of commissary privileges does not affect the legality or duration of
23 Petitioner’s confinement, the R&R recommends this court dismiss the Petition for lack of
24 jurisdiction. (*Id.* at 4–8.) The R&R further finds that, contrary to Petitioner’s assertions,
25 *Ziglar v. Abbassi*, 137 S. Ct. 1843, 1865 (2017) does not confer jurisdiction over
26 Petitioner’s claim. (*Id.* at 6–7.) Finally, the R&R declines to convert the Petition into a civil
27 rights complaint because such a complaint would be moot based on the expiration of
28 Petitioner’s 30-day loss of commissary privileges. (*Id.* at 8.)

1 Petitioner objects to the R&R on four grounds. (Doc. 21.) First, Petitioner argues
2 that *Ziglar* confers jurisdiction on her case. (Doc. 21 at 1.) Second, she contends that the
3 duration of her confinement is affected, and thus habeas jurisdiction is implicated, because
4 “any discipline infraction can preclude release under the CARES Act.” (*Id.* at 2.) Third,
5 Petitioner similarly argues that the disciplinary infraction affects the duration of her
6 confinement by making her ineligible to receive good time credits under the First Step Act.
7 (*Id.*) Finally, Petitioner contends the case is not moot for the foregoing reasons. (*Id.*)

8 In response, Respondent argues first that the R&R correctly concludes that the
9 *Ziglar* decision does not confer jurisdiction over Petitioner’s claims. (Doc. 22 at 2.) Second,
10 Respondent argues that Petitioner’s eligibility for home confinement does not affect the
11 duration of her custody because an inmate placed on home confinement in accordance with
12 the CARES Act is still serving her federal sentence in the custody of the Bureau of Prisons.
13 (*Id.* at 2-3.) Third, Respondent argues that Petitioner’s challenge to the disciplinary
14 infraction does not affect her eligibility for good time credits under the First Step Act
15 because inmates serving a sentence for Threats Against the President, as Petitioner is, are
16 statutorily excluded from earning time credits under that Act. (*Id.* at 3.) Finally, Respondent
17 argues that the case is moot because Petitioner’s previously stated arguments fail. (*Id.*)

18 **III. Applicable Law**

19 A civil rights action is the proper mechanism for a prisoner to challenge disciplinary
20 sanctions that do not affect the “fact or length” of her confinement. *Ramirez v. Galaza*, 334
21 F.3d 850, 855 (9th Cir. 2003) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973)). In
22 contrast, “[h]abeas corpus proceedings are the proper mechanism for a prisoner to
23 challenge the ‘legality or duration’ of confinement.” *Badea v. Cox*, 931 F.2d 573, 574 (9th
24 Cir. 1991) (citing *Preiser*, 411 U.S. at 484). Following this reasoning, the Ninth Circuit
25 Court of Appeals has held that habeas corpus jurisdiction is proper under 28 U.S.C. § 2241
26 for a prisoner seeking to expunge a disciplinary finding “only where ‘expungement is *likely*
27 to accelerate the prisoner’s eligibility for parole.’” *Ramirez*, 334 F.3d at 858 (quoting
28 *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir.1989)), *overruled on other grounds by*

1 *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016) (*en banc*); *see also Everett v. Clark*, 52
2 Fed. App'x 959, 960 (9th Cir. 2002) (mem.) (holding § 2241 petition was properly
3 dismissed for failure to state claims which warrant habeas corpus relief where petitioner
4 requested relief for the loss of commissary privileges).

5 **IV. Discussion**

6 **A. Jurisdiction**

7 Petitioner's reliance on *Ziglar* to assert that habeas corpus proceedings are "an
8 available remedy to address prison conditions issues," and thus an available remedy in her
9 case, is unavailing. (Doc. 21 at 1; *see also* Doc. 16 at 2 (citing *Ziglar*, 137 S. Ct. at 1865).
10 While acknowledging the question was "not before the Court," the Supreme Court in *Ziglar*
11 noted the *possibility* of habeas corpus relief for certain condition of confinement claims.
12 *Ziglar*, 137 S. Ct. at 1863. The Court noted that it is an open question "whether [detainees]
13 might be able to challenge their confinement conditions via a petition for a writ of habeas
14 corpus." *Id.* at 1862-63. As the R&R finds, merely "[n]oting the possibility of habeas
15 corpus relief for certain condition of confinement claims does not confer jurisdiction on
16 Petitioner's claim in this case." (Doc. 17 at 7.)

17 Petitioner's contention that habeas jurisdiction is implicated because the
18 disciplinary infraction caused her to be ineligible for home confinement under the CARES
19 Act is likewise not compelling. The decision to place a prisoner on home confinement does
20 not confer habeas corpus jurisdiction because the decision does not affect the fact or length
21 of a prisoner's confinement. *See United States v. Earl*, 729 F.3d 1064, 1068 (9th Cir. 2013).
22 A person is not "released" from imprisonment, nor is her federal sentence reduced, merely
23 because she is physically allowed to leave the prison. *Id.* A prisoner placed on home
24 confinement as part of her federal sentence by the Bureau of Prisons ("BOP") is not in fact
25 "released from imprisonment" because the prisoner has "not yet completed h[er] federal
26 term of imprisonment" and remains under BOP's legal custody. *Id.* (internal quotation
27 marks omitted). Accordingly, even if Petitioner's disciplinary infraction negatively
28 impacts her eligibility for home confinement under the CARES Act, the disciplinary

1 infraction nevertheless does not affect the legality or duration of her confinement because
2 Petitioner would not be “released” from imprisonment—nor would her federal sentence be
3 reduced—merely as a result of being placed on home confinement.

4 Petitioner’s claim that the disciplinary infraction affects her duration of confinement
5 by causing her to be ineligible for good time credits under the First Step Act also fails. A
6 prisoner serving a sentence for a conviction under 18 U.S.C. § 871 “relating to threats
7 against the President” is ineligible to receive time credits under the First Step Act. 18
8 U.S.C. § 3632(d)(4)(D)(xx). Petitioner is serving a sentence for violations of 18 U.S.C. §
9 871(a), Threats Against the President. (Doc. 15 at 2.) Thus, she is ineligible to receive time
10 credits under the First Step Act. As a result, the disciplinary infraction cannot affect the
11 legality or duration of her confinement under that Act.

12 As the R&R concludes, Petitioner’s challenge to the disciplinary infraction and loss
13 of commissary privileges will not affect the legality or duration of her confinement. Put
14 another way, expungement of the disciplinary finding is not likely to accelerate Petitioner’s
15 eligibility for release or parole. As a result, this Court lacks habeas jurisdiction under 28
16 U.S.C. § 2241.

17 **B. Mootness**

18 The judicial power of all federal courts is limited to actual cases or controversies.
19 U.S. Const. art. III; *see also Flast v. Cohen*, 392 U.S. 83, 94–95 (1968). “In general a case
20 becomes moot ‘when the issues presented are no longer “live” or the parties lack a legally
21 cognizable interest in the outcome.’” *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (quoting
22 *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 396 (1980)).

23 Here, Petitioner may have been entitled to challenge the conditions of her
24 confinement in a civil rights suit seeking injunctive relief. *See Ramirez*, 334 F.3d at 856 (a
25 civil rights action is the proper mechanism for challenging conditions of confinement).
26 However, because Petitioner’s thirty-day loss of commissary privileges has expired, a civil
27 rights suit seeking injunctive relief would be moot. Therefore, this Court declines to
28 convert Petitioner’s habeas petition into a civil rights suit for injunctive relief.

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